



AlaFile E-Notice

01-CV-2023-903893.00

Judge: ELISABETH A. FRENCH

To: WHITTEN AUSTIN BROCK
Austinw@pittmandutton.com

NOTICE OF COURT ACTION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

DANIEL SULLEN ET AL V. VIVINT INC
01-CV-2023-903893.00

A court action was entered in the above case on 2/6/2024 10:26:10 AM

ORDER

[Filer:]

Disposition: GRANTED
Judge: EAF
Notice Date: 2/6/2024 10:26:10 AM

JACQUELINE ANDERSON SMITH
CIRCUIT COURT CLERK
JEFFERSON COUNTY, ALABAMA
JEFFERSON COUNTY, ALABAMA
716 N. RICHARD ARRINGTON BLVD.
BIRMINGHAM, AL, 35203

205-325-5355
jackie.smith@alacourt.gov

All natural Persons in the United States for whom Vivint accessed consumer report information without authorization and used his or her information to create a Vivint account between January 1, 2016, and the date the Court enters the Preliminary Approval Order of the Settlement and who have been subjected to Collection Efforts by Vivint. Excluded from the term “Damages Settlement Class” are: (1) any parent, subsidiary, affiliate, or controlled persons of Defendant, as well as the officers, directors, agents, servants, or employees of Defendant; (2) governmental agencies, entities, or judicial officers; and (3) any person or entity which properly executes and submits a timely request for exclusion from the Settlement Class; and,

(2) Injunctive Settlement Class

All natural Persons in the United States for whom Vivint accessed consumer report information without authorization between January 1, 2016, and the date the Court enters the Preliminary Approval Order of the Settlement and who have not been subjected to collection efforts by Vivint. Excluded from the term “Injunctive Settlement Class” are: (1) any parent, subsidiary, affiliate, or controlled persons of Defendant, as well as the officers, directors, agents, servants, or employees of Defendant; (2) governmental agencies, entities, or judicial officers; and (3) any person or entity which properly executes and submits a timely request for exclusion from the Settlement Class.

5. For settlement purposes only, Plaintiffs Daniel Sullen and Joshua Renfroe are hereby appointed as Class Representatives.

6. For settlement purposes only, the following counsel are hereby appointed as Class Counsel:

Tom Dutton
 Michael C. Bradley
 Jonathan S. Mann
 Austin B. Whitten
 Pittman, Dutton, Hellums, Bradley & Mann, P.C.
 2001 Park Place North, Suite 1100
 Birmingham, AL 35203

7. The Court recognizes that, pursuant to the Settlement Agreement, Vivint retains all rights to object to the propriety of class certification in the Litigation in all other contexts and for all other purposes should the Settlement not be finally approved. Therefore, as more fully set forth below, if the Settlement is not finally approved, and litigation resumes, this Court’s preliminary findings regarding the propriety of class certification shall be of no further force or effect whatsoever, and this Order will be vacated in its entirety.

8. The Court approves, in form and content, the Long Form Class Notice, Short Form Class Notice, Publication Notice, and Notice Plan, attached to the Settlement Agreement as

Exhibits 1, 2, 4(a), and 4, respectively, and finds that they meet the requirements of Alabama Rule of Civil Procedure 23(c)(2) and 23(e) and satisfy Due Process.

9. The Court finds that the Notice Plan as set forth in the Settlement Agreement meets the requirements of Alabama Rule of Civil Procedure 23(c)(2) and 23(e) and constitutes the best notice practicable under the circumstances, including through a dedicated website, Press Release, paid national media plan (including digital and social media advertising) and by direct individual notice by postcard and email (if known) to potential Settlement Class Members, and satisfies fully the requirements of Due Process, and any other applicable law, such that the Settlement Agreement and Final Order and Judgment will be binding on all Settlement Class Members. In addition, the Court finds that no notice other than that specifically identified in the Settlement Agreement is necessary in this action. The Parties, by agreement, may revise the Class Notice and Claim Form in ways that are not material, or in ways that are appropriate to update those documents for purposes of accuracy or formatting for publication.

10. A.B. Data, Ltd. is hereby appointed Settlement Administrator to supervise and administer the Notice Plan, as well as to oversee the administration of the Settlement, as more fully set forth in the Settlement Agreement.

11. The Settlement Administrator may proceed with the distribution of Class Notice as set forth in the Settlement Agreement and the Notice Plan, and all forms of Notice shall be issued no later than **February 13, 2024** (twenty-eight (28) days from the date of Preliminary Approval)(the “Notice Date”).

12. Settlement Class Members who wish to receive benefits under the Settlement Agreement must complete and submit a valid Claim Form in accordance with the instructions provided in the Class Notice. The Court hereby approves as to form and content the Claim Form attached to the Settlement Agreement as Exhibit 3.

13. All Claim Forms must be submitted to the Settlement Administrator and postmarked, sent by email, or submitted through the Settlement Website no later than **June 7, 2024** (forty-five (45) days after the Final Approval Hearing). Settlement Class Members who do not timely submit a Claim Form deemed to be valid in accordance with Section 2.6 of the Settlement Agreement shall not be entitled to receive any portion of the Settlement Fund.

14. Settlement Class Members shall be bound by all determinations and Orders pertaining to the Settlement, including the release of all claims to the extent set forth in the

Settlement Agreement, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. Settlement Class Members who do not timely and validly request exclusion in accordance with Section 3.2 of the Settlement Agreement shall be so bound even if they have previously initiated or subsequently initiate litigation or other proceedings against Vivint or the Released Parties relating to the claims released under the terms of the Settlement Agreement.

15. Any Person within the Settlement Class may request exclusion from the Settlement Class by expressly stating his/her request in a written exclusion request in accordance with Section 3.2 of the Settlement Agreement. Such exclusion requests must be received by the Settlement Administrator at the email address or mailing address specified in the Class Notice in written form, by first class mail, postage prepaid, and postmarked, no later than **April 15, 2024** (sixty (60) days from the Notice Date).

16. In order to exercise the right to be excluded, a Person within the Settlement Classes must timely submit a written request for exclusion to the Settlement Administrator providing his/her name, email, address, the name and case number of this Lawsuit, and a statement that he or she wishes to be excluded from the Settlement Classes. Any request for exclusion must be personally signed by the person requesting exclusion. No person within the Settlement Classes, or any person acting on behalf of, in concert with, or in participation with that person within the Settlement Classes, may request exclusion from the Settlement Classes of any other person within the Settlement Classes.

17. Any person in the Settlement Classes who elects to be excluded shall not: (i) be bound by any orders or the Final Order and Judgment; (ii) be entitled to relief under the Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of the Settlement Agreement.

18. Class Counsel may file any motion seeking an award of attorneys' fees, costs and expenses, as well as a Service Award for the Class Representatives, no later than **April 1, 2024** (fourteen (14) days prior to the Exclusion and Opt-Out Deadlines).

19. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who wishes to object to any aspect of the Settlement Agreement, including the amount of the attorneys' fees and expenses that Class Counsel intends to seek and the payment of any Incentive Award, may do so, either personally or through an attorney, by filing a written

objection, together with the supporting documentation set forth below in Paragraph 20 of this Order, with the Clerk of the Court, and served upon Class Counsel, Vivint's counsel, and the Settlement Administrator no later than **April 15, 2024**. Addresses for Class Counsel, Vivint's Counsel, the Settlement Administrator, and the Clerk of Court are as follows:

Class Counsel:

Tom Dutton
 Michael C. Bradley
 Jonathan S. Mann
 Austin B. Whitten
 Pittman, Dutton, Hellums,
 Bradley & Mann, P.C.
 2001 Park Place North, Suite 1100
 Birmingham, AL 35203

Vivint's Counsel:

Jason Tompkins
 Jonathan Hoffmann
 BALCH & BINGHAM LLP
 1901 Sixth Ave. N., Suite 1500
 Birmingham, AL 35203

Settlement Administrator:

A.B. Data, Ltd.
 600 A.B. Data Drive
 Milwaukee, WI 53217

Clerk of Court:

Clerk of the Circuit Court of
 Jefferson County
 Birmingham Division
 Jefferson County Courthouse
 716 N. Richard Arrington Blvd.
 Birmingham, AL 35203

20. Any Settlement Class Member who has not requested exclusion and who intends to object to this Agreement must state, in writing, all objections and the basis for any such objection(s), and must also state in writing: his/her full name, address and email; all grounds for the objection along with factual and legal support, including documentation or evidence purportedly proving the same, for the stated objection; and the identity of any other class action cases to which the Person objected in the previous four (4) years. If represented by counsel, the objecting Settlement Class Member must also provide the name and telephone number of his/her counsel. Objections not filed and served in accordance with this Order shall not be received or considered by the Court. Any Settlement Class Member who fails to timely file and serve a written objection in accordance with this Order shall be deemed to have waived, and shall be forever foreclosed from raising, any objection to the Settlement, including the fairness, reasonableness, or adequacy of the Settlement, the payment of attorneys' fees, costs, and expenses, the payment of any Service Award, and the Final Approval Order and the right to appeal same.

21. A Settlement Class Member who has not requested exclusion from the Settlement Class and who has properly submitted a written objection in compliance with the Settlement Agreement, may appear at the Final Approval Hearing in person or through counsel to show cause why the proposed Settlement should not be approved as fair, reasonable, and adequate. Attendance at the hearing is not necessary; however, persons wishing to be heard orally in opposition to the approval of the Settlement and/or Class Counsel's Fee and Expense Application and/or the request for a Service Award to the Class Representatives are required to indicate in their written objection their intention to appear at the Final Approval Hearing on their own behalf or through counsel. For any Settlement Class Member who files a timely written objection and who indicates his/her intention to appear at the Final Approval Hearing on their own behalf or through counsel, such Settlement Class Member must also include in his/her written objection the identity of any witnesses he/she may call to testify, and all exhibits he/she intends to introduce into evidence at the Final Approval Hearing, which shall be attached.

22. No Settlement Class Member shall be entitled to be heard, and no objection shall be considered, unless the requirements set forth in this Order and in the Settlement Agreement are fully satisfied. Any Settlement Class Member who does not make his or her objection to the Settlement in the manner provided herein, or who does not also timely provide copies to the designated counsel of record for the Parties at the addresses set forth herein, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise, and shall be bound by the Settlement Agreement, the releases contained therein, and all aspects of the Final Order and Judgment.

23. All documents in support of the final approval of the proposed Settlement shall be filed no later than seven (7) days before the Final Approval Hearing.

24. Pending the final determination of the fairness, reasonableness, and adequacy of the proposed Settlement, no Settlement Class Member may prosecute, institute, commence, or continue any lawsuit (individual action or class action) with respect to the Released Claims against any of the Released Parties.

25. A hearing (the "Final Approval Hearing") shall be held before the Court on **April 23, 2024**, at **9:00 a.m.**, at the Jefferson County Courthouse, 716 N. Richard Arrington Blvd., Courtroom 370, Birmingham, Alabama 35203 (approximately ninety (90) days after the date of

the Preliminary Approval Order) (or at such other time or location as the Court may without further notice direct) for the following purposes:

(a) to finally determine whether the applicable prerequisites for settlement class action treatment under Alabama Rule of Civil Procedure 23 have been met;

(b) to determine whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;

(c) to determine whether the judgment as provided under the Settlement Agreement should be entered, including a bar order prohibiting Settlement Class Members from further pursuing claims released in the Settlement Agreement;

(d) to consider the application for an award of attorneys' fees, costs, and expenses of Class Counsel;

(e) to consider the application for a Service Award to the Class Representatives;

(f) to consider the distribution of the Settlement Fund pursuant to the Settlement Agreement; and,

(g) to rule upon such other matters as the Court may deem appropriate.

26. The Final Approval Hearing may be postponed, adjourned, transferred, or continued by order of the Court without further notice to the Settlement Classes. At or following the Final Approval Hearing, the Court may enter a judgment approving the Settlement Agreement and a Final Judgment and Order in accordance with the Settlement Agreement that adjudicates the rights of all Settlement Class Members.

27. Settlement Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

28. All discovery and other proceedings in the Litigation as between Plaintiffs and Vivint are stayed and suspended until further Order of the Court except such actions as may be necessary to implement the Settlement Agreement and this Order.

29. For clarity, the deadlines set forth above and in the Settlement Agreement are as follows:

Class Notice Mailed by: **28 days from Date of Preliminary Approval, by February 13, 2024.**

Publication Notice by: **28 days from Date of Preliminary Approval, by February 13, 2024.**

Settlement Website launched by: 28 days from Date of Preliminary Approval,
by February 13, 2024.

Fee and Expense Application: 14 days prior to Objection/Exclusion Deadline:
by April 1, 2024.

Deadline for Objections/Exclusions: 60 days from Notice Date,
by April 15, 2024.

Final Approval Motion Filed: 7 days prior to Final Approval Hearing,
by April 16, 2024.

Final Approval Hearing: April 23, 2024, at 9:00 a.m.

Claims Deadline: 45 days after Final Approval,
by June 7, 2024.

DONE and ORDERED this 6th day of February, 2024.

/s/ Elisabeth A. French
ELISABETH A FRENCH
PRESIDING JUDGE

EAF/bw
cc: all parties